"If the money to be borrowed was intended to be used for the extinction of the debt agreed by the parties at £200, it seems to be unnecessary that the parties should go through the idle form of passing the cheque backwards and forwards."

It is true that in that case the money to be borrowed was intended to be used for the extinction of a debt. However, in my opinion, the same principle should be applied to the facts of this case where the defendant was liable to pay the stamp duties on the documents.

I have already referred to two documents which were executed in the office of Mr. Lee Eng Teh. For the sake of convenience I will refer to one of them as the promissory note and the other as the memorandum. In addition to these two documents, the plaintiff countersigned a copy of the promissory note and also signed a copy of the memorandum. However, he omitted to authenticate the copy of the promissory note and the question arose in the court below whether he authenticated the copy of the memorandum.

The copy of the promissory note was produced by counsel for the defendant in the court below while the plaintiff was being cross-examined. The plaintiff identified it as the copy which had been delivered to the defendant and had to admit that he had not signed the form of authentication.

It is to be observed that the memorandum contains an acknowledgment duly signed by the defendant that a copy of the memorandum authenticated by the plaintiff was delivered to and received by the defendant. It is highly significant that although counsel for the defendant produced the copy of the promissory note in the court below, he did not produce the copy of the memorandum in order to show that it had not been authenticated by the plaintiff. The defendant did not give evidence nor were any witnesses called on his behalf. In the circumstances of this case it seems to me that the learned judge was perfectly entitled to rely on the provisions of section 114(g) of the Evidence Ordinance, 1950, as he did, and to draw the inference that the copy of the memorandum which was delivered to the defendant was authenticated by the plaintiff.

It is clear that the memorandum, read by itself, does not satisfy the requirements of section 16 of the Moneylenders Ordinance, 1951 as it does not contain all the terms of the contract, especially the term regarding the collateral security. However, the evidence shows that both the promissory note and the memorandum were executed at practically the same time in Mr. Lee Eng Teh's office. In my opinion, in the circumstances of this case, the memorandum and the promissory note, which refers to the collateral security, can be read together. The following is a passage from the judgment of Greer L.J. in *Reading Trust Ltd.* v. *Spero* [2] at page 507:—

"Once the form of the promissory note is identified, it can, in my judgment, be treated as part of the memorandum of contract, and the memorandum can then be read as if it contained the words, 'on the security of a promissory note in the following form.'"

This passage was an *obiter dictum* in that particular case but I would respectfully adopt it and apply it to the facts of the present case. Once the memorandum and promissory note are read together, the requirements of section 16 of the Moneylenders Ordinance, 1951 are satisfied and the contract of repayment is enforceable.

For the reasons which I have stated, I would dismiss the appeal with costs.

Thomson L.P. and **Barakbah C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Rajendra & Teik Ee; K. Raja Nayagam.*

THE FREIGHTER "KIEN KUNG"

[O.C.J. (Buttrose J.) March 8, 1965]

[Singapore — Consolidated Suits Nos. 963 and 964 of 1963 and Suit No. 660 of 1963]

Insurance — Marine insurance — Missing ship — Perils of sea or barratry — Onus of proof — Complicity in casting away of vessel — Marine Insurance Act, 1906, s. 58

Three separate actions were instituted to recover the insured sums for cargo lost on the freighter "Kien Kung" which vanished while on a voyage from Singapore to Penang. Suits Nos. 963 and 964 of 1963 were consolidated. In suit No. 660 of 1963 it was agreed by the parties that the facts found by the court in Suit Nos. 963 and 964 would be acceptable in that suit, subject to the defendants' right to cross-examine the suppliers from whom the plaintiff purchased the goods. The plaintiffs' case was that the ship together with the cargo was lost, having sunk with all the said cargo by perils of the sea or by barratry of the master and mariners two of the risks insured against. The plaintiffs did not call either the master or any members of the crew to give evidence as to what happened to the ship, although they had come ashore after the alleged sinking of the ship.

Held: (1) the plaintiffs had failed to discharge the onus of proof which lay on them of establishing that the ship together with her cargo were lost by a peril insured against;

(2) the circumstantial evidence in the case showed that the plaintiffs were privy to the casting away of the ship.

Cases referred to:—

(1) *Twemlow & Ors.* v. *Oswin* 170 E.R. 1090.

(2) *Cohen* v. *Hinckly* 170 E.R. 1078.

(3) *Koster* v. *Reed* 108 E.R. 359.

(4) *Samuel* v. *Dumas* [1924] A.C. 431.

(5) *Compania Naviera Martiartu* v. *Royal Exchange Assurance Corporation* 19 Ll.L.R. 95.

(6) *Anghelatos* v. *Northern Assurance Co.* (1924) 19 Ll.L.R. 255.

(7) *Tropaioforos* [1960] 2 Lloyd's R. 473.

CONSOLIDATED SUITS.

M. Karthigesu for the plaintiffs is Suits 963 and 964 of 1963.

N. A. Christopher for the plaintiffs in Suit 660 of 1963.

J. E. Lloyd for the defendants.

Cur. Adv. Vult.

Buttrose J.: These proceedings arise out of the disappearance of the 316-ton Panamanian-registered freighter "Kien Kung" while on a voyage from Singapore to Penang and the consequent loss of all the cargo she was carrying, some million odd dollars worth of which was consigned to one firm in Penang, the Heng Thong Trading Company whose manager was one Koay Kim Hai.

Loong Moh Company Limited, the plaintiff in suits Nos. 963 and 964 of 1963, took out two policies of insurance on the cargo which it was shipping on the "Kien Kung", one with the Norwich Union Fire Insurance Society Limited (hereinafter referred to as the "Norwich Union") and the other with the China Insurance Company Limited (hereinafter referred to as the "China Insurance") the defendants in the suits above mentioned.

The cargo insured with the Norwich Union in the sum of $123,805 consisted of tape-recorders and other electrical equipment while that with the China Insurance in the sum of $430,297, consisted of textiles.

The plaintiff brought an action against each of these insurance companies claiming these sums and at the trial I ordered that the two actions be consolidated and tried together.

In a third suit No. 660 of 1963 relating to other cargo, consisting of tractor spare parts shipped by Bian Guan & Co. on the "Kien Kung" and insured with the British India General Insurance Company Limited (hereinafter referred to as the "British India") in the sum of $357,060, it was agreed by the parties that the facts found by the court in suit Nos. 963 and 964 of 1963 would be accepted in that suit, subject to the defendant's right to cross-examine the suppliers from whom the plaintiff purchased the goods. In the result this was done and the evidence for and on behalf of the plaintiff in that suit was called after the close of the plaintiff's case in suits No. 963 and 964 of 1963.

A further suit No. 1374 of 1963, relating to other cargo consisting of textiles and fountain pens shipped by Cheong Swee Cheng (trading as Hai Hong Shipping and Trading Co.) on the "Kien Kung" and insured with the Asia Insurance Co. Ltd. in the sum of $49,600, was ordered by me to be tried immediately after the conclusion of the first three suits above mentioned. When the case came on for hearing the plaintiff sought leave to discontinue his action but I ordered that it be dismissed with costs.

In suits Nos. 963 and 964 of 1963 the plaintiff Loong Moh Company Limited, alleged that it was named as the assured in two policies of marine insurance issued to it by the defendants Norwich Union and China Insurance respectively and dated the 24th December 1962 whereby the defendant, in consideration of the payment therein mentioned, insured the plaintiff and its assigns for $123,805 upon the tape-recorders and electrical equipment cargo and for $430,297 upon the textile cargo as specified in the policies shipped at Singapore on board the "Kien Kung" for the voyage Singapore to Penang, the insurance commencing from the loading of the cargo on board at the port of Singapore and until the said cargo was discharged and safely landed at the port of Penang.

The plaintiff further alleged that when the said cargo was duly shipped on board the "Kien Kung" the plaintiff endorsed the said policies in blank and despatched them to Heng Thong Trading Company of Penang, the consignees of the said cargo but the said Heng Thong Trading Company reassigned the said policies to the plaintiff when and after the said cargo was lost, having sunk with the said ship before the said voyage was completed, by reason whereof the plaintiff is now fully entitled under the said policies.

The plaintiff's case was that the ship, together with the cargo, was lost, having sunk with all the said cargo by perils of the sea or alternatively by barratry of the master and mariners, two of the risks insured against, and it was entitled to recover the full amount of the insurance.

In suit No. 660 of 1963 the plaintiffs, Bian Guan & Co. alleged that by a policy of marine insurance dated the 22nd December 1962 and made between Heng Thong Trading Co. of Penang and the defendant, the British India in consideration of the payment of the premium as mentioned therein, the defendant agreed to insure the said Heng Thong Trading Co. of Penang and their assigns for $357,060 against loss and all other perils, losses, misfortunes that had or should come to the hurt, detriment or damage of the brand new tractor spare parts cargo.

The plaintiff further alleged that the said

goods were duly shipped in the "Kien Kung" at Singapore for carriage to Penang, consigned to the said Heng Thong Trading Co., who then became the owners of the goods but during currency of the said policy and while so insured as aforesaid the said goods and all of them became a total loss by one or more of the aforesaid perils insured against and they were entitled to recover the full amount of the insurance.

The plaintiff's case was that on the 26th December 1962 the "Kien Kung" sank, with all the said goods, in the Straits of Malacca and that on the 20th April 1963 the said Heng Thong Trading Co. assigned the said policy of insurance to the plaintiff.

It will be convenient, I think, to deal with all three suits together.

The facts were that the "Kien Kung" sailed from Singapore on the 25th December 1962 and was never seen again. The vessel obtained a port clearance for Penang but never arrived there. At 2.45 p.m. on the 27th December the 13 members of the crew of the "Kien Kung" presented themselves at the Sekinchan Police Station, which is situated on the coast some quarter of a mile from the sea opposite the Straits of Malacca. They had come ashore in a sampan which was later found on the shore with the name "Kien Kung" painted on each side of the bow. The names of the crew were recorded by the police sergeant in charge of the station, and the fact that they informed him that they were on a journey from Hongkong to Penang by ship, there was a mishap at sea and their ship sank about 20 miles from Sekinchan in the Straits of Malacca. On being asked by the sergeant if they wished to make a report they declined. Why they should have said they had sailed from Hongkong and not Singapore is difficult to understand.

We are left completely in the dark as to what the mishap was which caused the "Kien Kung" to sink, if sink she did.

A search of the area in which the vessel was alleged to have sunk was carried out by Commander Pryor, R.N., in H.M.S. 'Dampier' without any trace of her being found.

Although the Straits of Malacca is the normal shipping lane between Singapore and Penang, and a reasonably busy one, the "Kien Kung" was not sighted by any other vessel using those waters at the material time, nor were any distress signals observed. Mr. Karthigesu submitted that the vessel sank due to a peril of the sea or to the master and crew scuttling her or if she did not sink she was handed over to someone else, the last two alternatives being barratrous acts and all three being, of course, risks insured against under the policies. But what is the evidence of this? There is none, but it is urged upon me that there is a presumption of loss of the vessel by a peril of the sea or barratry of the master and mariners.

It was said that the "Kien Kung" having sailed from Singapore on the 25th December 1962 on a port clearance for Penang never arrived there and was not heard of after the 27th December 1962. A search was made for the vessel but she was never found. It is not correct, in my view, to say that the vessel was never heard of again. There was the interview at the Sekinchan Police Station and later at the Cathay Hotel sometime in January 1963 when members of the crew were interviewed by Captain Todd of the Malayan Adjustment Company and Mr. Lloyd. The same facilities were available to the owners both of the vessel and the cargo or their representatives to do likewise, but they did not take advantage of them.

The plaintiffs did not call either the master or any member of the crew to give evidence as to what happened to the "Kien Kung" nor were any adequate or serious efforts, in my opinion, made to procure their attendance.

The plaintiffs rely on section 58 of The Marine Insurance Act, 1906 which is as follows:—

> "58 *Missing Ship* — Where the ship concerned in the adventure is missing, and after the lapse of reasonable time no news of her has been received an actual total loss may be presumed".

The plaintiff's contention is that once it is proved that the vessel sailed for a given port, the fact of her never having arrived there after the lapse of a reasonable time will be sufficient *prima facie* evidence enabling the court to presume a loss by perils of the seas.

Certain authorities were cited by the plaintiff in support of this proposition including *Twemlow & others* v. *Oswin;*[1] *Cohen* v. *Hinckly;*[2] *Koster* v. *Reed.*[3] But as the learned authors of *Arnould* on Marine Insurance 15th Edn. vol. 2, p. 805 point out cases for the first half of the nineteenth century or earlier are of little value now on questions of evidence. With that statement I agree. The first two cases referred to were tried in 1809 while the third was tried in 1826 in respect of a loss which occurred in 1821. The true principle of law, I apprehend, now established by the authorities in relation to these matters is that the onus is on the plaintiffs to prove that the ship was lost by a peril insured against, in this case a peril of the sea or barratry of the master and mariners, an onus which, in my judgment, they have failed to discharge.

Where the court is left in doubt upon the evidence whether the loss was due to a peril insured against or to some other cause not

covered by the policy then the plaintiffs have failed to discharge the burden which lies upon them of establishing that the loss is covered by the policy and the insurance companies are entitled to judgment.

The plaintiffs must prove a casualty or accident. Perils of the seas do not fall within the class of losses, the mere happening of which is proof of the casualty. The mere sinking of a vessel beneath the waves, by itself, does not establish a loss by perils of the seas. There must, in my view, be some evidence of a casualty or fortuitous occurrence and there is none here. The scuttling of a vessel is not a peril of the sea — see *Samuel* v. *Dumas* [4] — but if done without the privity of the owners is of course barratrous as being in fraud of them and one of the risks insured against.

The plaintiffs alleged that the "Kien Kung" was lost having sunk by barratry of the master and mariners. There was no evidence, in my view, to support this allegation. There was nothing to show that the master or the crew had any motive of their own for scuttling her, for as Lord Sumner indicated in *Compania Naviera Martiartu* v. *Royal Exchange Assurance Corporation* [5] at page 98, conduct to be barratrous must be in fraud of the ship owners or cargo owners and not in complicity with them. At page 99 Lord Sumner goes on to say that "ships are not cast away out of lightness of heart or sheer animal spirits. There must be some strong motive at work, and this is usually the hope of gain." In the present case there was no evidence of any operative motive to lead the master and crew to sink the ship on their own account.

The plaintiffs have in all these actions failed to discharge the onus of proof which lies upon them of establishing that the "Kien Kung", together with her cargo, were lost by a peril insured against.

This is sufficient to dispose of the case in the defendant's favour and they are entitled to judgment on this ground alone. It is always open to the insurance companies to rest their defence on failure to prove a loss by a peril insured against, without making any positive allegations against the assured. It was in this sense that Mr. Lloyd at the close of the plaintiffs' case submitted that on the evidence so far adduced the defendants were entitled to judgment without more ado. With that submission, for the reasons I have given, I agree. Mr. Lloyd intimated that he did not at that stage propose to argue that there was no case to answer because of matters which arose out of his cross-examination and the positive averment in his pleadings of complicity of the plaintiffs and Heng Thong Trading Co. in the casting away of the vessel, with regard to which he proposed to call evidence.

To establish their plea the defendants rely entirely on circumstantial evidence and Lord Birkenhead in *Anghelatos* v. *Northern Assurance Co.*[6] at page 257 succinctly states the position in this way:—

> "It may be a difficult matter to define precisely in cases of this kind what it is that the defendants must show in order to discharge the onus of establishing that the ship was fraudulently stranded. It is not possible to point to any one single circumstance and say that that single circumstance makes it plain that the ship was scuttled. It must never be forgotten that in this class of case almost every source of evidence is available to the plaintiffs, almost every source of evidence can be closed by the plaintiffs and almost every source of evidence can be influenced by the paintiffs. It would be, therefore, unreasonable in such a matter for the defendants to be confronted with the demand that they must establish by definite, positive and non-circumstantial proof that the vessel was criminally scuttled. As I conceive it, the duty of a court of law, investigating such matters is that it must examine the story taken as a whole. It may be that the result of such an examination will make it plain that there exist six or seven or eight circumstances of cumulative suspicion, any one of which, taken alone would not justify the court in fixing so grave and criminal a stigma upon plaintiffs as that of fraudulently stranding a vessel. We have, therefore, to inquire in this as in other cases of the same kind: Do circumstances exist, individually, perhaps, not of decisive consequence but in their cumulative effect establishing beyond reasonable doubt that the vessel was dishonestly stranded."

In the *"Tropaioforos"* [7] at page 473 Pearson J. puts the matter in this way:—

> "As to the burden of proof, the whole question has been reserved in the House of Lords; but subject to that reservation it has been established by decisions of courts of first instance and the Court of Appeal (with some support from dicta in the House of Lords) that the plaintiffs have the burden of proving, in a case such as this, that there was an accidental loss by perils of the seas, although the degree of proof required is only to show a balance of probabilities in favour of an accidental loss by perils of the seas. In assessing the balance of probabilities due weight must be given to the consideration that scuttling a ship would be fraudulent and criminal behaviour. No doubt one reason for placing the burden of proof on the shipowners in such a case as this is that they are likely to have all, or almost all, the relevant information and the insurers are likely to have no information initially. The insurers for their proof of scuttling or their suggestion that there is strong ground for thinking that there may have been scuttling, have to rely on such information as they can obtain from discovery of documents and from cross-examination of ship's witnesses called by the plaintiffs. That consideration has especial weight in the present case, because the ship's officers failed to preserve any of the log-books, charts, records of sounding or other ship's papers which might have had evidential value. There was no full report on the casualty by the master."

Before leaving these two cases I think I should add that I have not overlooked the fact that the plaintiffs in each of them were the owners of the vessel, whereas in the case before me the plaintiffs were the cargo owners. It was urged upon me that as such they were in no better position than the insurance companies and

while in certain cases that may well be, it is certainly not so, in my view, in the present case.

What then are the circumstances on which the defendants rely to establish beyond a reasonable doubt that the "Kien Kung" was cast away and that the plaintiffs and Heng Thong Trading Company were privy to it.

It was submitted by Mr. Lloyd that the plaintiffs and Heng Thong Trading Company have closed every source of evidence they could. While that is perhaps a somewhat too sweeping and general a statement of the position it is, in my opinion, substantially justified by the evidence.

The delay in giving discovery and its inadequacy when given can only be described as little short of scandalous and the patience of the defendants in the circumstance prodigious. Documents, matter and material which should have been disclosed were not, books and vouchers were destroyed or conveniently mislaid while in some instances documents and other matter were only produce for the first time at the trial. A number of these latter documents had an air of newness and freshness about them that was quite remarkable. This sorry state of affairs was not confined to the plaintiffs, or to one or two persons, but to nearly every one of those concerned or interested in this marine adventure, including the suppliers and tends to indicate a common intention or common course of conduct and a consistent pattern throughout.

The "Kien Kung" was grossly over insured. She was valued at $40,000 and insured for $338,000. Her international load line certificate was due to expire on the 5th January 1963 some 10 days after she disappeared and considerable expenditure is normally involved in obtaining a renewal. No arrangements had been made for the survey of the vessel in order to obtain a renewal of her international load line certificate and no cargo had been booked for any return voyage from Penang. Immediately prior to her sailing for Penang the wireless operator and two members of the crew were paid off. The owners of the "Kien Kung" were in dire financial straits and unable to meet their debts in respect of another of their vessels the 'Mike', later named the 'Gitana'. Lim Kim Hee the sole proprietor of the Union Shipping and Trading Company, the Singapore agents for the "Kien Kung", had no previous experience of managing ships. He had never been in the shipping business before or since the "Kien Kung" affair, which represented his sole venture in the business. His premises are always shuttered and he is never to be found. I found him a singularly unreliable and indifferent witness.

Lim Kim Hee's manager, one Sim Choon Ngee, who is alleged to have attended to the sailing of the "Kien Kung" and the shipping of the goods and to matters arising after her loss, including the requirements of the stranded crew, was not called to give evidence and cannot be found. Neither the master nor any member of the crew were called to give evidence as to what happened to the "Kien Kung". Normally I think one would expect a master of a vessel which was sunk to come forward readily in a desire to vindicate his seamanship. Yet, when asked whether they wanted to make a report at Sekinchan police station, they refused. Despite the fact that they all came ashore in reasonably good shape no log books, charts or other ship's papers have ever been produced.

It should appear that the master did subsequently make a report to the Panamanian Consular Office in Penang and it was sought to tender in evidence, as I understood it, a certified copy of that report through the secretary to the Panamanian Consul-General in Singapore. I ruled that the report was inadmissible. What is significant is the singular lack of interest displayed by the plaintiffs and Heng Thong Trading Company immediately after the disappearance of the "Kien Kung" as to what happened to her. Their failure to make any realistic attempt to seek out or interview the master and crew when they were in Singapore to which I have already referred or to ascertain what had become of the ship and her cargo is difficult to understand. No effort whatever apparently was made to ensure their attendance later if necessity arose or to keep track of them.

It was of no avail, as it turned out to try and do so later on, as the correspondence demonstrated, nor was the matter pursued with any real vigour or enthusiasm.

There was the remarkable statement by Lim Hong Ngiap the managing director of Loong Moh Company Limited that he left for the Federation after the sinking of the "Kien Kung" but could not remember when. He could not remember by what means he travelled there. He could not remember where he stayed in Penang and if he saw anyone he could not remember what he said to them. Almost in the next breath he said he went to Penang to find out about the sinking and about his payments — that was the sole purpose of his visit. He only went to see Koay Kim Hai of Heng Thong Trading Company. He did not attempt to go and see the Panamanian consul in Penang or the master of the "Kien Kung" or her Penang agents.

Koay Kim Hai's version of this alleged meeting was even less illuminating. He said Lim Hong Ngiap came to see him but could not remember what they discussed — it was just a courtesy call — he could not remember if they

discussed the sinking.

I find both these versions quite impossible of belief and I have grave doubts as to whether any such meeting ever took place.

Again the lapses of memory or as Mr. Lloyd not inaptly described it, the amnesia virus which appeared to strike down the plaintiffs and their main witnesses so frequently and so easily, invited not only the gravest suspicion but actual disbelief.

There was the astonishing evidence in relation to what I may be permitted to refer to as the incident of the expanding cases which when it transpired that their dimensions as sworn to by Koh Cho Phua in his answers to interrogatories were not big enough to take the tractor spare parts, they grew bigger and bigger as the trial proceeded until they were at last able to take them. The evidence on this subject became a bewildering maze of contradictions and confusion.

In addition, in this connection, the evidence of Mr. Butler in relation to Sin Seng Huat and Kiaw Huat & Co. two of the firms from whom it is alleged Ng Ah Kim purchased some of the crankshafts, sprocket assemblies and other spare parts to supply to the plaintiff Bian Guan & Co. must not be overlooked. Mr. Butler said he visited the premises of Sin Seng Huat and found a number of spare parts in the store most of which looked 15 to 20 years old. They were neither properly protected nor stacked but just jumbled together including precision parts which were neither greased nor oiled. He said he would'nt have purchased from that firm at any price.

Mr. Butler also visited the premises of Kiaw Huat & Co. where he said he saw a few very old worn out pieces of equipment and a load of rubbish and he would not consider purchasing tractor or motor spare parts from them under any circumstances. Mr. Butler is an experienced engineer with special reference to earth-moving equipment. In his opinion neither of these firms could carry an outstanding debt of some $120,000 for a couple of years.

There was the curious common connection in which Koay Kim Hai figured prominently between the various companies and firms mentioned in these proceedings and those connected with them. There were also the various common factors between previous sinkings and insurance claims with the personnel referred to in these proceedings again with particular reference to Koay Kim Hai.

Heng Thong Trading Company the consignee of some million odd dollars worth of cargo was but newly formed. The consignee of the remaining cargo was also only just recently established and closed almost immediately due to losses.

Insofar as the consignors of the cargo (the plaintiffs) and the consignees were concerned, it appeared that this transaction was far in excess of and quite exceptional to their normal trading activities at or about the material time.

From such books as were produced by Teck Leong Textiles, this particular transaction disclosed a pattern of trading out of all proportion to their normal business.

No books of International Export Agencies, about whom I shall have a word to say in a moment, were produced at all.

The Union Shipping & Trading Co. as I have already mentioned have never been engaged in the shipping business before or since the "Kien Kung" — their one and only venture. None of the plaintiffs has paid anything in respect of the goods they purchased and shipped on the "Kien Kung". Koay Kim Hai was insolvent as were a number of other firms and companies mentioned in connection with these proceedings and with which he was connected.

Every venture he turned his hand to appears to have been a failure.

One of the ventures in which Lim Hong Ngiap was engaged was Reliance International Enterprises which closed down soon after it started. His partner in this enterprise was a convicted extortioner, one Ting Siew Kay, although Lim Hong Ngiap denied any knowledge of this. It also appeared that Ting Siew Kay was a friend of Koh Cho Phua, who went bail for him on one occasion. Ting Siew Kay has taken a lively and active interest in these proceedings both inside and outside the court including an interview with the insurance company officials.

After observing him in the witness box and listening to his evidence I came to the clear conclusion that a more undesirable partner and friend it would be impossible to find.

Loong Moh Company Ltd. was making insufficient profits to pay its basic salaries while Bian Guan & Co. were almost invariably overdrawn.

I am satisfied that this cargo shipped by the plaintiffs was insured at a value very substantially in excess of the prime cost thereof.

Whether or not the excess was so great as to require disclosure to the insurance companies and thus come under the heading of non-disclosure of a material fact thus enabling the defendants to avoid the policy, I am not, on the

evidence before me, prepared to make any finding. It is, however, a most material point in considering whether the vessel was scuttled and whether the cargo interests were privy to the scuttling.

Again there was the apparent unconcern shown by the plaintiffs over the packing of the goods. Although Koh Cho Phua, the managing director of Bian Guan & Co., swore in his answers to interrogatories that he supervised the packing of all the cases, it transpired at the trial that the supervision was of but 5 minutes duration and he never saw the cases packed at all.

Lim Hong Ngiap appears to have been equally unconcerned and it was only after some time and with considerable reluctance that he was forced to admit his connection with 128-9 Cairnhill Road, where he once resided, the address of International Export Agencies, the sole proprietor of which is Lim Teck Khoon, his brother-in-law from whom he alleged he purchased the electrical equipment. As I have already remarked, no books of any description have ever been produced by International Export Agencies and despite the relationship between them, Lim Teck Khoon has not been called, is not prepared apparently to give evidence voluntarily on behalf of his brother-in-law and all attempts to serve him with a subpoena have proved abortive and he has for the time being disappeared.

These are but some of the matters to which reference should properly be made and the question arises, as always, in cases such as this, whether the facts of the case taken as a whole render the general inference proper to be drawn from these facts so irresistible that the matter, though not established by direct evidence, has escaped from the atmosphere of reasonable doubt.

Mr. Christopher has conceded that the circumstances here give rise to suspicion only — even strong suspicion. Has the matter in issue here escaped from the realms of suspicion into proof beyond a reasonable doubt? In this case I cannot doubt that it has.

The cumulative effect of all these circumstances taken as a whole, is so irresistible, that it has led me to the conclusion beyond a reasonable doubt that the plaintiffs and Heng Thong Trading Company were privy to the casting away of the "Kien Kung".

I think I should add that with regard to suit No. 660 of 1963 the fact that the cases shipped on board the "Kien Kung" containing brand new tractor spare parts as alleged has not, in my view, been sufficiently proved and on that additional ground also, in so far as the plaintiffs in that suit are concerned, their claim fails.

In the result, the defendants are entitled to judgment in each of the three suits and the plaintiff's claims in each case must be dismissed with costs.

Claims dismissed.

Solicitors: *Allen & Gledhill; N. A. Christopher; Drew & Napier.*

GOH BOK SENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 10, 1965]

[Singapore — Magistrate's Appeal No. 32 of 1964]

Penal Code, s. 148 — Rioting — Sentence.

Criminal Procedure — Sentence — Appeal for leniency — Alleged defect in character — No previous conviction.

The appellant was convicted on his own plea of guilty 'of rioting under section 148 of the Penal Code. After his appeal for leniency in mitigation the prosecutor informed the magistrate that although he had no previous conviction he was a fighter in a secret society. He was sentenced to 4 months' imprisonment.

Held: the statement by the prosecutor was entirely irrelevant in so far as sentence was concerned. Sentence reduced to 3 months imprisonment.

MAGISTRATE'S APPEAL.

The accused was charged as follows:—

"You are charged that you on or about 11.11.63 at about 11.00 p.m. at Jalan Afifi, Singapore, were members of an unlawful assembly and did in prosecution of the common object of that assembly, to wit, to cause hurt to one Goh Ah Hock and Koh Ah Bah committed the offence of rioting, and at the time of committing the said offence, you were armed with deadly weapons, to wit, a parang, an iron rod and a stick and thereby committed an offence punishable under section 148 of the Penal Code, Cap. 119."

He pleaded guilty and the facts were recorded and admitted without qualifications. He was then convicted.

The following day when he appeared for sentence, the learned magistrate recorded as follows:

"*Injuries:*

(1) Goh received 2½" laceration on right side of head.

(2) Koh received

(a) 1" laceration on forehead,

(b) ½" laceration on left shin,

(c) scattered abrasions on right arm,

(d) abrasion on left knee and

(e) small laceration beside the right eye.

Goh's and Koh's injuries are consistant with blows from sharp-edge objects.

Mitigation: Leniency.